

REMARKS/ARGUMENTS

Claims 1 and 21-40 stand allowed, with claims 41-60 rejected and claims 2-20 objected to in the outstanding Official Action. Claims 2-20 and 41-60 have been amended and therefore claims 1-60 remain in this application.

The Examiner's acknowledgment of Applicants' claim for foreign priority and receipt of the certified copies of the priority documents is very much appreciated. Additionally, the Examiner's consideration of Applicants' previously submitted Information Disclosure Statement is appreciated.

In section 2 of the Official Action, the Examiner objects to the title of the invention. Applicants have amended the title to recite "PERFORMANCE LEVEL SELECTION IN A DATA PROCESSING SYSTEM USING A PLURALITY OF PERFORMANCE REQUEST CALCULATING ALGORITHMS" and believes that this title is indicative of the invention covered by the present claims. However, should the Examiner have a different title which he believes is more appropriate, Applicants will certainly consider any such suggestion.

Claims 2-20 and 42-60 stand objected to because of alleged informalities. In claims subsequent to claim 1 which recites "a method," the Examiner suggests that claims 2-20 should read "the method as claims in claim 1" and with respect to claims 42-60, the Examiner contends that the language should read "the computer program product" rather than "a computer program product." Applicants' undersigned representative knows of no section in the Manual of Patent Examining Procedure (MPEP) that requires that a dependent claim recite "the" in reference to the parent claim. In fact, every dependent claim by definition is a reference to the parent claim, but with a limitation, i.e., the limitation added by the dependent claim. Thus, in effect, the

dependent claim is "a" new method claim more limited than claim 1 and merely incorporating by reference the steps previously set forth in claim 1. Therefore, the Examiner's objections to claims 2-20 and 42-60 is respectfully traversed. However, as Applicants read "a" and "the" to be essentially the same with respect to claim drafting procedures, claims 2-20 and 42-60 have been amended as suggested by the Examiner. The above amendments to these claims are believed to obviate any further objection to the claims.

Claims 41-60 stand rejected under 35 USC §101 as allegedly directed to non-statutory subject matter. The Examiner contends that these claims manipulate an abstract idea "without producing a useful, concrete and tangible result." Applicants' review of 35 USC §101 states that in order to be patentable, the patentable subject matter must be a "new and useful process, machine, manufacture, or composition of matter"

Nowhere in §101 can Applicants find any reference to a "concrete and tangible result" and how or why the Patent Office believes that the specification of a method claim which is a "useful process" must set forth "concrete and tangible results" is not understood. The method may well be, as set out in claims 1-20 herein, as series of steps which improves something. An improved result may not be "concrete and tangible" and yet it is still an improvement and still a "useful process" and therefore is statutory.

Therefore, Applicants respectfully traverse the PTO requirement that claims must provide a "concrete and tangible result." However, Applicants have amended claim 41 (from which claims 42-60 depend) to recite "a computer program product comprising a computer readable storage medium bearing a computer program" The reference to the computer program product comprising a computer readable storage medium is computer program product language

previously indicated as acceptable by the U.S. PTO and is offered as confirmatory of the allowance of these claims and the storage is certainly a "tangible result." Accordingly, reconsideration of the rejection of claims 41-60 as being non-statutory is respectfully requested.

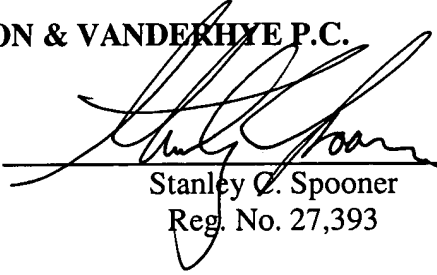
The Examiner's indication that claims 1 and 21-40 are allowed over the prior art is very much appreciated. In view of the above minor amendments to claims 2-20, they are also believed to be allowable over the art. In addition to the minor amendments to claims 41-60 to overcome the objection and the amendment to recite "a computer readable storage medium" to overcome the rejection, claims 41-60 are believed allowable over the prior art.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-60 as amended above are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

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